

2000

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

GAMING MACHINE (AMENDMENT) BILL 2000

EXPLANATORY MEMORANDUM

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Gaming Machine (Amendment) Bill 2000

Summary

The *Gaming Machine (Amendment) Bill 2000* provides for a number of amendments to the *Gaming Machine Act 1987* (the Principal Act) to increase the accountability of the ACT club industry. The amendments are summarised as follows:

Compulsory community contributions

The Bill provides for compulsory minimum level of community contributions by club gaming machine licensees from net gaming machine revenue. The level of contribution is initially set at 5% of net gaming machine revenue increasing to 7% over a three year period.

The community contributions must contribute to, or develop or support the social fabric of the Territory or another community. They also may use the community funds to assist sport or other recreational activity conducted in the Territory or with participants predominantly based within the Territory.

Larger clubs to be incorporated under Corporations Law

The proposed amendment increases accountability by providing that all clubs with a gaming machine licence and an annual gross revenue greater than \$500,000 be incorporated under Commonwealth Corporations Law. The amendment allows a period of six months from the date of enactment to comply with the new provision. This will place all larger club organisations under the control of the Australian Securities and Investment Commission (ASIC) which is better resourced to undertake the scrutiny of these organisations to protect the general community.

Associated organisations and general membership rules

This amendment is to further enhance the accountability and regulatory obligations that are considered necessary to ensure that clubs are generally operated in accordance with the wishes of its voting members.

The proposed amendment addresses this by removing the anomaly which allows for an associated organisation of a licensed club to have the power to appoint a majority of the directors of the club. This amendment places control of the licensed club in the hands of its voting members and not with an associated organisation.

Penalties for late payment of taxes

This proposed amendment is to remove what is considered to be a severe and unreasonable penalty if a licensee fails to pay monthly gaming machine tax and/or the annual community contribution shortfall tax by the due dates. Currently, where the tax is not paid by the due date the licence immediately ceases to be in force.

The proposed amendment will overcome this situation by deleting section 25A of the Principal Act. In the absence of this penalty provision in the Principal Act the existing provisions under the *Taxation Administration Act 1998* (Tax Act) will apply. The Tax Act provides for the imposition of a late payment penalty charge at a specified rate. Notwithstanding, the Gambling and Racing Commission retains the discretionary power to suspend or cancel a licence under the general disciplinary provisions at section 24 of the Principal Act.

Revenue/Cost Implications

The Bill will not result in any additional direct revenue for the ACT Government and the additional administrative costs will be absorbed from within existing resources.

Details of the *Gaming Machine (Amendment) Bill 2000*

Formal Clauses

Clauses 1, 2 and 3 are formal requirements and refer to the short title of the Bill, its commencement options and the identification of the Principal Act.

Interpretation

Clause 4 amends section 4 of the Principal Act by:

- (a) omitting the definition of “tax” as this is to be expanded; and
- (b) inserting definitions of “community contribution”, “community contribution shortfall”, “community contribution shortfall tax”, “gaming machine tax”, “net revenue” and “required community contribution”.

Transfer of Licence

Clause 5 amends section 23 of the Principal Act by omitting from subsection (6) “tax imposed on the gross revenue derived from the operation of” and substituting “gaming machine tax in relation to”. The tax reference in this section is specifically to gaming machine tax.

Repeal

Clause 6 repeals section 25A of the Principal Act as section 58 of the Principal Act is amended to provide for the Tax Act to apply in the event of the non-payment of gaming machine tax liability.

Eligible clubs

Clause 7 makes the following amendments to section 30C of the Principal Act:

- (a) inserts before paragraph (a) new paragraph “(aa) the club is incorporated in the Territory under the Corporations Law; and”; and
- (b) inserts the following subsections at the end:
 - (2) provides that paragraph (1)(aa) does not apply to a club that was a licensee on 30 June 2000 and had a corrected gross revenue of less than \$500,000 in the financial year ending 30 June 2000. However, paragraph (1)(aa) will apply to a club licensee after the relevant period in relation to a later financial year in which the club had a gross revenue of \$500,000 or more.
 - (3) defines the terms “corrected gross revenue” and “relevant period”.

Associated Organisations

Clause 8 makes the following amendments to section 30D of the Principal Act:

(a) omits from paragraph (a) “(whether or not incorporated)”;

(b) omits paragraph (c) and inserts the following paragraphs:

- (c) is incorporated under the Corporations Law or as an association;
- (d) its statement of objects includes eligible objects and indicates that the eligible objects together constitute the main part of its objects;
- (e) is conducted primarily to achieve eligible objects; and
- (f) approval of the organisation as an associated organisation would not result in the club ceasing to be conducted primarily to achieve eligible objects.

(c) inserts the following subsection at the end:

(2) (a) provides that a reference to the statements of objects of an organisation incorporated under Corporations Law to be a reference to its memorandum; and

(b) provides that a reference to an eligible object of an organisation that is not a club to be a reference to an object that would be an eligible object if the organisation were a club.

Membership Rules

Clause 9 makes the following amendments to section 30G of the Principal Act:

(a) omits paragraph (f) and inserts the following paragraphs:

(f) provides that the term of office of the governing body of a club shall be for periods of not more than 3 years at which time members must be elected or re-elected;

(g) provides that all positions on the governing body must be at least 51% free positions and the holders of free positions have at least 51% of the votes on any matter.

(b) inserts the following subsection at the end:

(2) (a) provides for the definition of “free” position such that the holder of a free position is nominated and elected only by voting members of the club and that any voting member is eligible to be elected to the position without further qualification.

(b) provides for the definition of “restricted” position such that the holder of a restricted position must qualify for a free position and is nominated, elected or appointed by or at the direction of an associated organisation or is required to be a member of an associated organisation.

Notice of reviewable decisions

Clause 10 provides that section 52 of the Principal Act is amended by adding “or” at the end of paragraph (1)(y) and inserting new paragraph (z) “refusing to approve contributions as community contributions under section 60B”.

Insertion

Clause 11 provides for the insertion of the heading "*Division 1 – General*" before section 54 of the Principal Act.

Repeal

Clause 12 provides for the repeal of sections 54A, 54B, 54C and 54D of the Principal Act as new "*Division 2 – Community Contributions*" replaces these sections.

Gaming Machine Tax - liability

Clause 13 provides for the amendment of section 58 of the Principal Act by omitting from subsection (1) "Tax imposed by section 57" and inserting "Gaming machine tax". The amendment also provides for the insertion of new subsection (3) "gaming machine tax in relation to the operation of a gaming machine during a month is due on the 7th day after the end of the month.". This amendment allows for the *Tax Administration Act 1998* to apply in the event of non-payment of a tax liability and clarifies the due date of the tax payment.

Insertion

Clause 14 inserts the following new Division after section 60 in Part 7 of the Principal Act:

"Division 2 – Community Contributions"

60A Contributions

Provides that a reference to a contribution made by a licensee in this Division includes the value of a contribution made in kind, but does not include the following:

- (a) expenditure on commercial activities or by clubs on social or entertainment activities for its members;
- (b) expenditure intended to promote specific activities of the licensee;
- (c) contributions made out of donations collected by the licensee or from the proceeds of any special fund raising activities conducted by the licensee;
- (d) contributions to a business association, political party or trade union;
- (e) if a contribution is made on a condition, the value to the licensee of that condition being fulfilled; or
- (f) contributions made to another club under a reciprocal arrangement.

60B Approval of community contributions

Subsection (1) provides that the Gambling and Racing Commission may approve contributions made by a licensee that is a club as "community contributions" if it is satisfied that the contributions will have the effect of contributing to, developing or supporting the social fabric of the Territory or another community. The Commission may also approve contributions to assist sport or other recreational activities conducted in the Territory or with participants predominantly based within the Territory.

Subsection (2) provides that an approval under subsection (1) may be made generally or in a particular case.

Subsection (3) provides for the Minister to publish a notice in the ACT Gazette issuing guidelines for approving community contributions.

Subsection (4) provides that guidelines issued by the Minister are a disallowable instrument.

60C Records of community contributions

Provides that a licensee must record each community contribution made specifying the organisation to which, or the purpose for which, each contribution was made. It must also state the amount or value of the contribution including the date or period when it was made.

This section provides for a criminal sanction for breaches including a maximum penalty of 20 penalty units.

60D Report

Provides that in relation to a financial year, a licensee must within 1 month after the end of that financial year, give the Gambling and Racing Commission a copy of the records kept under new section 60C. The licensee must also provide a report specifying their gross revenue, net revenue if they are a club and total value of the community contributions made.

This section provides for a criminal sanction for breaches including a maximum penalty of 20 penalty units.

60E Commission must report to Minister

Provides that in relation to a financial year, the Gambling and Racing Commission must within 3 months after the end of that financial year, report to the Minister summarising the extent of compliance by licensees with sections 60C and 60D. The Commission must also analyse the extent to which revenue received by licensees was being used to make community contributions and report this to the Minister.

60F Minister must table Commission's report

Provides that the Minister must table in the Legislative Assembly the report given to him or her under section 60E within 10 sitting days of having received it.

60G The required community contributions

Subsection (1) provides that in relation to a financial year, the "required community contribution" a club licensee must make as a proportion of net revenue is 5% in 2000-2001, 6% in 2001-2002 and 7% thereafter. The Minister may also determine other amounts to those specified.

Subsection (2) provides for the Gambling and Racing Commission to lower the required community contribution if the gross revenue of a club is or is likely to be less than \$200,000 in a financial year. The Commission must also be satisfied that the application of the full amount of community contribution would so seriously affect its viability that it would not be just and equitable in the circumstances.

Subsection (3) provides that a determination by the Minister under subsection (1) is a disallowable instrument.

60H Community contribution shortfall tax - imposition

Subsection (1) provides that a tax, called the “community contribution shortfall tax” is imposed on a club licensee for any community contribution shortfall at the rate of 100%. This allows for the full recovery of any contribution shortfall.

Subsection (2) defines “community contribution shortfall”.

60I Community contribution shortfall tax - liability

Subsection (1) provides that the “community contribution shortfall tax” must be paid by the licensee.

Subsection (2) provides that the tax is due 30 days after the licensee receives an assessment under Part 6 of the *Gambling and Racing Control Act 1999*.

60J Community contribution shortfall tax - allocation

Provides that the Gambling and Racing Commission must transfer any amount of “community contribution shortfall tax” to the Community Services Grants Program Fund or such other fund prescribed in the regulations.

Insertion

Clause 15 inserts the following new sections after section 67 of the Principal Act:

68 Transitional provision for clubs not incorporated under the Corporations Law

Subsection (1) provides that a club licensee has a period of 6 months, or up to 2 years if allowed by the Gambling and Racing Commission, from the commencement of section 7 of the *Gaming Machine Amendment Act 2000*, to become incorporated in the Territory under the Corporations Law.

Subsection (2) provides that this section ceases to operate after two years as the section is only a transitional arrangement.

69 Transitional provision for associated organisations

Subsection (1) provides that an associated organisation has a period of 6 months, or up to 2 years if allowed by the Gambling and Racing Commission, from the commencement of section 8 of the *Gaming Machine Amendment Act 2000*, to satisfy the new requirements of section 30D.

Subsection (2) provides that this section ceases to operate after two years as the section is only a transitional arrangement.

70 Transitional provisions for clubs with non-complying membership rules

Subsection (1) provides that a club has a period of 6 months, or up to 2 years if allowed by the Gambling and Racing Commission, from the commencement of section 9 of the *Gaming Machine Amendment Act 2000*, to satisfy the new requirements of section 30G.

Subsection (2) provides that this section ceases to operate after two years as the section is only a transitional arrangement.

